

# **South Carolina Motion Picture Incentive Act Policies and Procedures**



**More for your movie.**

**These policies are effective as of June 1 2014**

These policies and procedures are subject to review and may be changed as necessary. Please be sure your copy is current and to contact the SC Film Commission about pending changes.

## **Thank you for choosing South Carolina for your production.**

South Carolina's *cash rebate* incentive is designed with you in mind: It is easy to use and cash is returned to your Production within 30 (thirty) days of final audit and compliance check. The attached document addresses the policies and procedures necessary for your production to best capitalize upon our incentives. These will be reviewed with your production team in detail once they arrive in South Carolina. This executive summary will familiarize you with the program; however, it is to your benefit to understand how our incentives program works. We encourage you to review the complete policies and procedures and give us a call with any questions that you may have.

### **The Overview:**

Be sure that your line producer, producers, and production accounting team understand the importance of following our simple rules in the attached Policies and Procedures. The Film Commission will set up a meeting with your producers and accounting staff to go over this information in detail. It is essential that these people attend this meeting. We recommend that one of your on-the-ground producers be tasked with supervising the incentives process to assure that your projected rebate amounts are received. The continuity that this producer will bring to the process, particularly once the film has wrapped and most of the crew is gone, will allow for a speedier and more complete rebate.

The rules for our WAGE REBATE are simple: A Qualified Production is eligible for a wage rebate of up to 25 per cent (25%) for the persons employed in conjunction with the South Carolina production. The following requirements must be met in order to be eligible for the wage rebate: (a) wages for each qualifying person must be less than one million dollars (\$1,000,000) for the project and (b) all hires must be subject to – South Carolina withholding taxes to qualify. South Carolina individuals employed make your production eligible for 25% and all other employees including actors and stunt players are eligible for a 20% rebate. We have hosted many productions and there is ample crew available. The Film Commission is a ready resource for crew and supplier information; just give us a call with any questions.

The SUPPLIER REBATE is also simple: the Production receives thirty (30%) for supplies and services obtained from SC vendors. The rule-of-thumb is that if the product or service is taxable in SC, it qualifies. Also, keep in mind that your *production may be exempt from paying State sales and accommodations tax* at the point of purchase. This additional savings of up to 8% reduces your expenditures with SC vendors by as much as 38%. There are many SC vendors that understand the needs and demands of production. If they don't have an item in stock they can find it. We encourage you, your Department heads, and buyers to develop a close rapport with our vendors. But please note that a pass-thru company, that is, a company specifically set up to order any items from out-of-state, does not qualify. Also, you cannot order an item from a South Carolina vendor that has no relation to the vendor's customary stock. For example, you may not obtain grip and electric supplies from a beauty supply shop and have it count as a rebate expenditure. Finally, services performed out-of-state are not qualified expenses; for example, there are no film processors physically located in South Carolina, so film processing does not qualify. And you can't make a flat services deal with a local company that includes processing; if an out-of-state service does not qualify, you can't make it qualify by routing it through a local company. The Film Commission can help you find qualified vendors.

Here are a couple of additional tips:

For mileage, we recommend a fuel card, like the one offered by Fuel Man. It lists where the purchases are made, so there are no questions, weeks, perhaps months, later when the bills are audited. Instead of a car allowance, rent a car from a SC company.

Airfares don't qualify, nor do cost for completion bonds or workers comp. However, production insurance does qualify, if ordered from a South Carolina broker.

Internet orders don't qualify, but we're sure a local vendor can supply you with needed items.

Some companies have found it helpful to institute a purchase order approval process, where every PO for an out-of-state item must be approved by the producer, in advance. This helps insure that incentive projections made in prep are achieved at wrap.

FORMS – we require a weekly supplier report, and a bi-weekly wage report. These must look EXACTLY like the attached examples, and must be completely filled out. The leading payroll companies and their software can generate these reports. At the end of the production we require summary forms, which must also look EXACTLY like the attached. Be careful about deadlines; if you need to assign the wage rebate (to a lender, for example) it must be done within the prescribed time limit, or it will not be valid.

Please call us to request an application. In order to ensure a more expeditious application process, prospective projects should have a completed script, be green-lit and have secured all necessary funding or funding commitments prior to applying.

The Film Commission is here to support your production and make your experience in South Carolina positive and productive. If you have any questions about our incentive policies and procedures, or even about an individual expenditure, please be sure to call us for answers.

We look forward to working with you.

Sincerely,  
South Carolina Film Commission  
803.737.0498

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# Welcome to South Carolina

## **What You Should Know About Us**

At the South Carolina Film Commission, we understand your business and its unique place at the intersection of art and commerce. We appreciate your pursuit of an uncompromising creative vision. And more importantly, we can help bring it to life with the financial viability of some of the most diverse locations, experienced crew, and progressive incentives in the world. Above all else, you should know the degree to which we share your passion and that we're just as eager to share our home.

Over the years, we've extended South Carolina values and hospitality in all directions. From the major studios to a host of burgeoning independents, filmmakers from every corner of the industry have delighted in our desire to match their own level of attention and support for a project. Call us today and let us show you what South Carolina can offer you.

## **South Carolina Film Commission Staff**

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803.737.0496  
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803.737.0498  
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[ijohnson@scprt.com](mailto:ijohnson@scprt.com)

South Carolina Film Commission Web site: [www.FilmSC.com](http://www.FilmSC.com)

## **Contacts at the Department of Revenue**

### Withholding-Compliance Contact

Jean Funches

Taxpayer Advocate Section

803.896.5444

[FuncheJ@sctax.org](mailto:FuncheJ@sctax.org)

### Business Registration

David Demary

803.898.4938

[demaryd@sctax.org](mailto:demaryd@sctax.org)

### Sales and Use Tax Contact

Ulysses Byrd

803.898.5744

[byrdu@sctax.org](mailto:byrdu@sctax.org)

Department of Revenue Web site: [www.sctax.org](http://www.sctax.org)

## **South Carolina Secretary of State's Office**

Main Number

803.734.2170

Business Filing Division

803.734.2158

South Carolina Secretary of State's Office Web site: [www.scsos.com](http://www.scsos.com)

## **South Carolina Business One Stop Web site**

This Web site enables you to:

- Register your business in SC
- Obtain licenses and permits
- File and pay business taxes
- Link to helpful business resources

South Carolina Business One Stop Web site: [www.scbos.com](http://www.scbos.com)

## **I. Executive Summary**

### **South Carolina Motion Picture Incentive Act**

The purpose of South Carolina motion picture incentives is to provide assistance for the recruitment of film and television series projects that promote the natural beauty and diversity of South Carolina and derive economic benefit to the state by encouraging the hiring of South Carolina residents as staff, cast, and crew; stimulating the purchase of supplies and services from South Carolina companies; and growing tourism visitation to the state by increasing awareness of South Carolina's unique variety of travel destinations. In tandem, these benefits serve to generate new economic opportunities and enhance the quality of life for South Carolinians.

In May 2005, the South Carolina General Assembly passed the South Carolina Motion Picture Incentive Act (Act) creating incentives for motion picture and television production companies that film all or part of their project in South Carolina.

In order to help you understand the incentives and to aid you in applying for, qualifying for, and maintaining qualified status for the incentives, the South Carolina Film Commission (Film Commission), a division of the South Carolina Department of Parks, Recreation & Tourism (Department of Parks, Recreation & Tourism), has developed policies and procedures addressing the incentives.

The Film Commission, Department of Parks, Recreation & Tourism, and the Film Evaluation and Advisory Committee, an independent body composed of various Departmental Directors of Parks, Recreation and Tourism, determine whether particular motion picture and television productions, and the expenditures associated with those productions, qualify for incentives under the Act. By signing the Qualifying Production Letter discussed later in this document, you agree that these incentives are discretionary and are fully within the purview of the Department of Parks, Recreation & Tourism. The Film Commission can aid you in applying for the incentives; however, the Film Commission cannot guarantee that a particular production will receive the incentives or the amount of incentives that the production may receive.

These policies and procedures are subject to review and may be changed as necessary. Please be sure your copy is current (see date on each page) and to contact the Film Commission about pending changes.

### **An Overview of the Act and Incentives Available**

#### **Wage and Supplier Rebates**

Under the Act, a motion picture production company (production company) is a company engaged in the business of producing "motion pictures," which are defined as feature-length films, videos, television series, or commercials made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot. A production company must film all or part of its production in South Carolina in order to be considered for the incentives offered under the Act.

All motion picture and television productions that meet the definition of "motion picture" provided in the Act will be referred to as "productions" in these policies and procedures.

Incentives available to a qualifying production are:

#### **1. Up to 25% Wage Rebate**



- 2. 30% Supplier Rebate**
- 3. A sales and use tax exemption on all goods, services, accommodations**
- 4. Location fee-free filming locations owned by the State of South Carolina may be made available. Contact the Film Commission for complete details**

The Wage and Supplier rebates are currently capped and the total amount that may be allocated to all qualifying productions in a single fiscal year (July 1, 2014 –June 30, 2015) cannot exceed this amount. There are provisions for shows that span fiscal years. See more in the Wage Rebate section of this document.

The requirements to receive each of the incentives mentioned above are discussed in detail within these policies and procedures; however, in order to qualify for any of the incentives, the production company must complete a Qualifying Motion Picture Application (application). The application must be approved before the commencement of principal photography within South Carolina. The application requires that information be submitted concerning the production company, the production, production timelines, total anticipated expenditures, anticipated South Carolina expenditures, and other pertinent information. The application is initially reviewed by the Film Commission and then forwarded to the Director of the Department of Parks, Recreation & Tourism or his or her designee for the approval of the production for the sales and use tax exemption. The application is then forwarded to the Film Evaluation and Advisory Committee for approval of the production for the Wage and Supplier rebates. If the application is approved for the sales and use tax exemption, the Wage Rebate, and/or the Supplier Rebate, the production company must: (1) Set up a staffed and functioning production office in South Carolina within sixty (60) days of signing the Incentive Agreement Letter (2) Maintain a functioning South Carolina production office until the Production's final Supplier Rebate request has been audited by the SCFC.

In addition to the sales and use tax exemption, the Wage Rebate, and the Supplier Rebate, South Carolina also has incentives aimed at developing the film industry infrastructure in the State. These include:

## **Tax Credits**

### **1. Tax Credit for South Carolina Companies that Produce Commercials**

Production companies that produce commercials and that make a total base investment of more than \$500,000 in filming commercials in the State during a calendar year are eligible for a State income tax credit equal to ten percent (10%) of the total investment made in South Carolina. The total amount allowed to all production companies each year cannot exceed \$1 million.

### **2. Tax Credits for the Creation of South Carolina Motion Pictures or Facilities**

The investors in South Carolina created motion pictures and/or production/postproduction facilities are entitled to State income tax credits based upon their investment amount. Application by the production company and certification before any activities begin and approval by the Department of Parks, Recreation & Tourism are required for all parties.

#### **A. Motion Picture Project Tax Credit**

A taxpayer may claim an income tax credit of up to twenty percent (20%) of the taxpayer's cash investment in the development or production of a single South Carolina motion picture.

- Credits are limited to \$100,000 (one hundred thousand) per taxpayer
- Unused credit may be carried forward fifteen (15) succeeding taxable years

- All credits cannot reduce a taxpayer's income tax liability by more than fifty percent (50%) for any given year

## **B. Production/Postproduction Facility**

- A taxpayer may claim an income tax credit of up to twenty percent (20%) for the construction or conversion, or equipping, or any combination of these activities of a motion picture production or postproduction facility. Minimum investments in the facilities apply.
- Total credits claimed by all taxpayers may not exceed \$5 million in a single qualified facility.
- Unused credit may be carried forward fifteen (15) succeeding taxable years.
- All credits cannot reduce a taxpayer's income tax liability by more than fifty percent (50%) for any given year.

## **South Carolina Production Fund**

The Film Commission has established a grant program to produce short films, in any media format that promote collaborative production and educational efforts between State institutions of higher learning and motion picture related entities.

Contact the Film Commission for more details on any of these incentives.

## **Confidential Proprietary Information**

The Department of Parks, Recreation & Tourism is committed to protecting confidential proprietary information of the production company from disclosure. Under applicable state law, confidential proprietary information submitted by the production company to the Department of Parks, Recreation & Tourism, Film Commission, or Film Evaluation and Advisory Committee is not required to be disclosed to the public. If confidential proprietary information is included in documents or other information that must be disclosed publicly, the Department of Parks, Recreation & Tourism, in consultation with the production company, will redact the confidential portions prior to disclosure. By law, the Department of Parks, Recreation & Tourism is required to submit a public report annually to the Film Evaluation and Advisory Committee on the use of funds for the Wage and Supplier Rebate, but no confidential proprietary information is included in this report. Additionally, after execution by the production company (thereby indicating acceptance by the production company of incentives identified therein), the Qualifying Production Letter (described on page 13) is subject to disclosure upon request as soon as the production is publicly announced. The Qualifying Production Letter does not contain any confidential proprietary information.

Once a production becomes a "Qualified Production" (has been notified that its application has been accepted by the South Carolina Film Commission to participate in the South Carolina Motion Picture Incentive Program), the South Carolina Film Commission requires the production company and its payroll company to share information. The SCFC asks authorized persons from each of these entities to sign a waiver to share information that usually is only shared with a production company and its associated corporations such as payroll companies or personal service companies and the SC Department of Revenue. By signing the letter, the companies authorize the SC Department of Revenue to send reports directly to the SCFC at the end of a production.

## **Background**

The production company and any related entity working in South Carolina in connection with the production must be current with respect to all South Carolina taxes and obligations owed to the State of South Carolina. The Production Company must be current with respect to obligations to state residents and companies, or the production company will not be eligible to receive any rebate funds for individual obligations that have not been paid. In the event that debts are not resolved within sixty (60) calendar days of the completion of physical production, the Production Company authorizes the SCFC to pay any SC debts of the production company from the production company's reserved rebate funds first.

**Form WH-403: Assignment of Rebate to Motion Picture Production Company**

Any payroll services company that is used must complete this form prior to the commencement of filming in South Carolina. This form provides an irrevocable assignment of its rebate to the production company.

**Form C-268: Certificate of Tax Compliance Request Form.** This form must be submitted to the Film Commission for each production company and any payroll services company that will be used in connection with the production and for which the Wage Rebate is applicable. A \$60 processing fee, in the form of a check made out to the "S.C. Department of Revenue," must accompany each Form C-268. This check is submitted through the SC Film Commission at the end of production, not requested directly by the aforementioned entities.

At beginning of production, these forms must be completed and sent to the SCFC along with the 60 dollar processing fee mentioned above. The forms and the check will be held by the SCFC until the appropriate time at the end of the production when they will be submitted by the SCFC to the SC Department of Revenue along with payment for the above compliance request forms.

## **II. Qualifying Production Application Process**

### **A. DECISION CRITERIA**

#### **1. Evaluation of Incentive Application**

There are often a number of different productions competing for the Wage and Supplier rebates each year. For this reason, priority will be given to productions that hold the most promise for benefiting South Carolina by hiring South Carolina crew, using local suppliers, being bonded and insured, and holding a distribution plan. To determine if a production qualifies for the incentives the Film Commission, Department of Parks, Recreation & Tourism, and the Film Evaluation and Advisory Committee will consider the following:

##### **a. Application**

- Is it completely filled out, signed, dated, and notarized?
- Has the application been completed by an authorized agent or principal of the production company?
- Are all of the necessary documents included?

##### **b. Script**

- Does it contain obscene content, as defined by the United States Supreme Court?

##### **c. Budget**

- Does the production have the necessary financing in place to begin production on the designated start date?
- How much and what percentage of the budget will be spent in South Carolina?
- Do the production company's wage scales reflect industry standards?

##### **d. Distribution Plan**

- On what date will the master be released for distribution?
- Is there a distributor attached to the production?

##### **e. Completion Bond and Insurance**

- Is there a completion bond and insurance policy in place with industry-recognized providers?
- If a production decides to proceed in South Carolina without a bond, the Film Evaluation and Advisory Committee and the Department of Parks, Recreation & Tourism reserve the right to withhold all or any portion of any Wage or Supplier Rebate for that production until the Film Evaluation and Advisory Committee and/or the Department of Parks, Recreation & Tourism are satisfied that all South Carolina obligations have been met and the production company demonstrates that it has the financial capacity to complete the production. For this reason, a non-bonded production may have its rebates delayed.

##### **f. Production Company**

- Does the production company, and its principals and producers, have appropriate industry references?

**g. Production Schedule**

- Has a production schedule been submitted?
- Does the production schedule follow a reasonable timeline until completion?

**h. Filming location**

- In which area(s) of the State will the production film?

**i. Availability of Funds**

- Are the necessary Wage and Supplier Rebate incentive funds available to support the required reimbursement requests? If not, how much of the available funds can be committed to the production?

**2. Certification of Qualified Productions**

The decision-making process for designating a production as a “qualified production” will follow the below sequential steps. Each step must be completed before the next step can begin.

**a. Receipt of Completed Application**

A completed application must be signed by a person at the production company authorized to sign on behalf of the production company. The original application is to be sent via courier service to the following address

The South Carolina Film Commission  
1205 Pendleton Street, Room 225  
Columbia, South Carolina 29201  
Attention: Tom Clark  
803.737.0498

The following must be included with the application:

- Copy of the shooting script
- Copy of the production’s line item budget. The budget must be completed in Movie Magic and show line items expected to qualify for South Carolina’s incentives notated in a separate budget column (subcategories). If more convenient, the applicant may submit a separate budget sheet to identify the line items and amounts to be spent in South Carolina.
- Copy of the production’s schedule

If the application is not complete or documents are missing, the Film Commission will advise the production company within fifteen (15) business days of receipt of the application.

Please call us to request an application. In order to ensure a more expeditious application process, prospective projects should have a completed script, be green-lit and have secured all necessary funding or funding commitments prior to applying.

## **b. Film Evaluation Committee Review of Application**

After initially reviewing the application and necessary accompanying documents, the Film Commission will forward the application to the Film Evaluation and Advisory Committee for its approval or disapproval of the applicable incentives. The Director of the Department of Parks, Recreation & Tourism or his or her designee must approve the production and production company for the sales and use tax exemption; the Film Evaluation and Advisory Committee must approve the Wage and Supplier Rebates. Generally the Director or his or her designee and the Film Evaluation and Advisory Committee will approve or disapprove the production company for the applicable incentives within fifteen (15) business days of receipt of the application by the Film Commission. Approval for the sales and use tax exemption will not be made until the production company has registered to do business in South Carolina with the South Carolina Secretary of State.

## **c. Notification to South Carolina Department of Revenue**

If the application is approved by the Film Evaluation and Advisory Committee and the Director of the Department of Parks, Recreation & Tourism or his or her designee, they will inform the Film Commission that the application has been approved and the Department of Parks, Recreation & Tourism will then notify the South Carolina Department of Revenue (Department of Revenue) that the production has been approved for the sales and use tax exemption so that the Department of Revenue may issue a sales and use tax exemption certificate (exemption certificate). If the production company is approved for a Wage Rebate, the Department of Parks, Recreation & Tourism will notify the Department of Revenue that the production company and any payroll service companies, loan-out companies, or personal service corporations associated with the production will be submitting the appropriate withholding forms for the Wage Rebate.

## **d. Notification to Qualified Productions**

The Department of Parks, Recreation & Tourism will notify the production company in writing by sending them a "Qualifying Production Letter" as to whether or not the production has been approved for incentives. In the Qualifying Production Letter, the production company will be advised of the exemptions and/or rebates the production is eligible for and that the Department of Parks, Recreation & Tourism has reserved the estimated minimum South Carolina Supplier and/or Wage Rebate reimbursement amounts, if any.

## **e. Qualifying Production Letter**

The Qualifying Production Letter verifies the terms of the incentives. The Qualifying Production Letter must be signed by a person at the production company authorized to sign on behalf of the production company and returned to the Film Commission within ten (10) business days of the date on the Qualifying Production Letter.

In order for the Department of Parks, Recreation & Tourism to continue to reserve funds for the production and in order for the production company to continue to comply with the terms of the Qualifying Production Letter:

- The production must start verifiable production activity in South Carolina within sixty (60) calendar days from the date of the Qualifying Production Letter.
- Principal Photography must begin within thirty (30) calendar days of the date specified in the Qualifying Production Letter.

- The production must register to transact business in South Carolina with the South Carolina Secretary of State within ten (10) business days of the date on the Qualifying Production Letter.

#### **f. Denial of the Application**

In the event that a production company or production does not meet the minimum statutory or program requirements or the application is not accepted or approved for another reason, the Department of Parks, Recreation & Tourism will communicate such determination to the production company in writing within ten (10) business days of its disapproval for the incentives.

### **3. Meeting with Film Commission**

After the receipt of a signed copy of the Qualifying Production Letter and the line producer's arrival in South Carolina, a meeting will be held as soon as possible with the following people to review all policies and procedures, schedule audit dates, and discuss all reporting requirements:

- Producers and Unit Production Managers
- Production Accountant
- Motion Picture Company representatives and attorneys
- Film Commission Project Manager
- Film Commission Auditor ("Auditor")
- Others as necessary

## **B. RESERVATION OF REBATE FUNDS**

When an application is approved, the funds for both the projected Wage Rebate and projected Supplier Rebate are reserved for the qualifying production. These funds remain on reserve as long as production activities adhere to the dates specified in the Qualifying Production Letter and the other conditions set forth in these policies and procedures continue to be met.

Wage Rebate Fund dollars are appropriated annually by the State legislature. Therefore, wage Rebate Fund dollars are reserved for projects only until May 31 of each year. As a result, all final wage rebate reporting must be submitted by production companies to the SCFC within sixty (60) calendar days of the completion of physical production in South Carolina or before May 31, whichever comes first. Should your project span South Carolina's fiscal year (July 1 – June 30), complete the application as directed. Indicate on an attachment the amount of wage dollars that will be spent and the proportional rebate dollars applied for (1) by May 31 and (2) the wage dollars that will be spent and proportional amount rebate dollars applied for from June 1 until the completion of your project. Approved projects that span fiscal years will be first in line for the following year's appropriation of wage rebate dollars. A second application must be submitted for these funds. It is recommended that the second application be submitted to the SCFC no later than May 1.

Supplier Rebate requests with supporting documentation must be received and expenditures must be verified before the production leaves the State. Supplier Rebate funds are not limited to the State's fiscal year constraints. Only actual expenditures paid shall be qualified expenditures, not outstanding accounts.

All Wage and Supplier Rebate requests must be made by the times specified in the policies and procedures. Wage and Supplier Rebate requests submitted outside these time periods may be permanently barred.

Whether or not to reserve funds and how much to reserve for television pilots and possible subsequent series will be decided on a case-by-case basis and the following factors among others may be considered: South Carolina's funding cycle; the project's anticipated production and decision-making schedule; production budget; who will be broadcasting the pilot and series and whether the broadcast(s) will be national; the number of South Carolina residents on the production payroll, and the amount of wages paid to South Carolina residents.

### **1. Total Rebate Funds Available for an Individual Production**

- The Qualifying Production Letter will provide the total Wage and/or Supplier Rebate amounts available for rebate to the production. Reimbursement amounts may be less than provided in the Qualifying Production Letter if the production's qualified expenditures are less than estimated. Total reimbursement will be determined through verification of qualified expenditures

## **C. DISQUALIFICATIONS**

### **1. Statutory Disqualification**

- All production companies that receive a tax exemption certificate must expend at least \$250,000 (two hundred fifty thousand) within the 12-month period from the date of the exemption certificate in connection with the filming or production of one or more productions in South Carolina. Failure to do so will result in the production company becoming immediately liable for all sales and use tax exempted.<sup>1</sup>
- All production companies must expend at least \$1 million (one million dollars) in a single taxable year on South Carolina production costs in connection with the production in order to qualify for the Wage and the Supplier Rebates. Failure to do so will result in complete disqualification for the Wage and/or Supplier Rebate.

### **2. Program Disqualification**

In addition to disqualification for failure to meet the statutory minimum requirements for the incentives, other facts and circumstances may result in disqualification after approval. These facts and circumstances include, but are not limited to, the following:

- Failure to begin production activities as defined by the Film Commission, in South Carolina by the date specified in the Qualifying Production Letter. (Generally, the date is sixty (60) calendar days from the date the production is approved.)
- A delay in principal photography that exceeds the date specified in the Qualifying Production Letter by more than thirty (30) calendar days from the expected start date of principal photography as given in the Qualifying Production Letter.
- Prohibiting the Film Commission, the Department of Parks, Recreation & Tourism, the Department of Revenue, or any other necessary entities from completing accurate audits.
- Failure to file any required reports as specified by the Film Commission, the Department of Parks, Recreation & Tourism, the Department of Revenue, or the Film Evaluation and Advisory Committee within the allocated time frame.

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<sup>1</sup> Even if a motion picture production company fails to meet the minimum requirements under the Incentive Act to qualify for the state sales and use tax exemption, the exemption under South Carolina Code § 12-36-2120(43) may still apply.



- Failure to return the original sales tax exemption certificate to the Department of Revenue before leaving South Carolina. The Film Commission may facilitate the return of the sales tax exemption certificate to the Department of Revenue by collecting it from the production company and delivering it to the appropriate employee at the Department of Revenue.
- Failure of the production company, payroll service company, personal service corporation, or loan out company to pay any and all taxes and obligations owed to the State of South Carolina or its political subdivisions. The production company must make a good faith effort to ensure that the appropriate withholding tax is withheld and remitted by payroll service companies, personal service corporations, and loan-out companies.
- Failure to pay industry standard wages.
- Failure to pay all South Carolina debts to personnel or vendors before submitting final Supplier and Wage Rebate Request.
- Engaging in economic transactions and business relationships and structures without substance, entered into for the purpose of increasing the amount of incentives or altering the appearances of expenditures or vendors in order to meet the qualifications for the incentives.
- Failure to practice responsible production practices or adhere to the Code of Conduct as specified in the California Film Commission's Filmmaker's Code of Professional Responsibility.
- Failure to cooperate fully with the South Carolina Film Commission.

#### **D. PAYROLL SERVICES**

Individuals employed by payroll service or loan-out companies or personal service corporations must be working in South Carolina in connection with the production. All production companies must obtain approval from the Department of Parks, Recreation & Tourism concerning their proposed payroll methods, particularly whether payroll will be handled internally or through a third-party service. Failure to obtain this approval will result in disqualification to receive the sales and use tax exemption, the Wage Rebate, and/or Supplier Rebate. All required information regarding payroll services including, but not limited to, identification of each division of any payroll company being used with their respective FEIN and SC withholding number, contact information, and address must be submitted prior to the commencement of principal photography.

### **III. Individual Incentive Details**

#### **A. SALES AND USE TAX EXEMPTION**

A production company planning to spend \$250,000 in South Carolina within twelve (12) consecutive months may receive an exemption from all State sales, use, and accommodations taxes on goods and services purchased, leased, or rented for production by the production company. Granting the exemption from State sales, use, and accommodations taxes is at the sole discretion of the Department of Parks, Recreation & Tourism. If applicable, the sales and use tax exemption will be effective as of the date of approval of the production company's application by the Director or his or her designee.

##### **1. Things You Need to Know**

- An estimate of expenditures must be filed with the Department of Parks, Recreation & Tourism before the commencement of any production activities in South Carolina.
- The Application for the sales and use tax exemption must be approved by the Director of the Department of Parks, Recreation & Tourism or his or her designee must provide written certification of the production's qualification for the sales and use tax exemption to both the production company and the Department of Revenue.
- The production company's registration with the South Carolina Secretary of State must be received by the South Carolina Film Commission before the Sales and Use Tax Exemption Certificate will be issued.
- The production company will be liable for sales and use taxes exempted and possible penalties if the minimum qualification of \$250,000 spent in the State cannot be documented. However, the production company will have sixty (60) days to pay any tax due without incurring penalties. If the \$250,000 expenditure is not met, the sales and use tax is considered due as of the date the property was purchased or brought into South Carolina for use, storage, or consumption.<sup>2</sup>
- This exemption applies only at the point of purchase. No refunds will be provided for sales or use tax paid. The Film Commission strongly recommends that the production company keep copies of its exemption certificate and that it contact retailers and other sellers before purchases are made.
- The exemption applies only to the production company. Purchases by third-party suppliers and reimbursed through the production company do not qualify.
- Upon receipt of the exemption certificate, the production agrees and understands that it will submit a report of its actual expenditures in a format designated by the Department of Parks, Recreation & Tourism, upon completion of the production, to the Department of Parks, Recreation & Tourism for auditing purposes.<sup>3</sup>
- The production company must designate a representative to work with the Department of Parks, Recreation & Tourism and the Department of Revenue on reporting of expenditures and other information necessary to take advantage of the exemption certificate.

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<sup>2</sup> S.C. Code Section 12-62-40(D).

<sup>3</sup> S.C. Code § 12-62-40(E)

- The original exemption certificate must be returned to the Department of Revenue before leaving South Carolina. Failure to return the exemption certificate may result in your Wage and/or Supplier Rebate being delayed or permanently barred. The Film Commission may facilitate the return of the exemption certificate to the Department of Revenue by collecting it from the production company and delivering it to the appropriate employee at the Department of Revenue.

## **2. Required Forms**

- This incentive does not require any additional forms other than the application.

## **3. Exemption Procedures**

- Upon approval of the Director of the Department of Parks, Recreation & Tourism or his or her designee, and after the production company registers to do business in South Carolina with the South Carolina Secretary of State, the Department of Revenue will issue the production company an exemption certificate, Form ST-433. The exemption is effective on the date the application is approved by the Director of the Department of Parks, Recreation & Tourism and expires shortly after the production's filming in South Carolina is anticipated to be completed.
- A copy of Form ST-433 is given to the retailer by the production company at the time of purchase. The retailer may maintain a copy of the certificate on file so that it is not necessary to provide a copy each time a purchase is made from the same retailer. The Department of Revenue has a Qualifying Production Letter available that can accompany the exemption certificate and may help ease the process of receiving the exemption at the point of sale. We strongly recommend that retail management be contacted before purchases are made to facilitate this exemption.
- Sales to or purchases, leases, or rentals by a production company after the expiration date are not exempt. However, if filming and production is expected to extend beyond the original expiration date, a revised exemption certificate with a new expiration date can be issued by contacting the Department of Revenue's License and Registration Section at 803.898.5391. When the exemption certificate is received by the production company, the production company must report purchases, as required, to the Department of Parks, Recreation & Tourism and Department of Revenue, and allow the Department of Parks, Recreation & Tourism and the Department of Revenue to view the production company's accounting records.

## **4. For More Information**

- For greater detail about the sales and use tax exemption and Frequently Asked Questions about the exemption, please see SC REVENUE RULING #05-7, which can be found at [www.sctax.org/Tax+Policy/Policy/Calendar+Year+2005.htm](http://www.sctax.org/Tax+Policy/Policy/Calendar+Year+2005.htm). Additional information may also be obtained from the Department of Revenue's Web site: [www.sctax.org](http://www.sctax.org).

## **B. SOUTH CAROLINA SUPPLIER REBATE**

A production company spending at least \$1 million in South Carolina may receive a 30% rebate on goods and services acquired in the State from a South Carolina Supplier.

### **1. Things You Need to Know**

- The Supplier Rebate is personal to the production company.

All expenditures and the Supplier Rebate Request must be filed with the Film Commission and the Film Evaluation and Advisory Committee prior to the departure of the production company from South Carolina. In addition, all supplier expenditures must be audited, with a company accounting representative present to answer any questions, before the South Carolina production office closes. Failure to do so may result in disqualification for the Supplier Rebate.

- Only actual paid expenditures incurred in South Carolina made by the production company may be recorded, certified as direct production or qualified personnel expenses, and claimed at the end of production for the South Carolina cash rebate. Expenditures including, but not limited to accrued charges, accounts payable, payments waiting to be paid, or deferrals do not constitute direct production expenditures eligible for the rebate.
- The production company must provide a complete vendor list to the Film Commission.
- Any scouting expenditures incurred or contracted for in South Carolina by the production company sixty (60) calendar days or less prior to the approval of the application may be eligible for reimbursement.
- The Supplier Rebate may not be used to reimburse any personnel expenditures however structured or classified.
- The Supplier Rebate is available only for those purchases that are made at fair market value in arm's length transactions.
- Only actual expenditures paid shall be qualified expenditures, not outstanding accounts.
- Purchases over \$5,000 (five thousand dollars) for real or personal property are subject to review and any rebate may be prorated based on the use and/or actual incurred cost of the real or personal property to the production.

### **2. Required Forms**

- Schedule D – Supplier Rebate Report: The SC Spend Report (good spend) is required bi-weekly. The final Supplier Rebate Report, due when requesting the Supplier Rebate, must contain both good and bad spend. The final Supplier Rebate Report must include the following fields: Department, vendor, eligible spend, state, transaction type, date, invoice number, description, and amount.
- Schedule E- Supplier Rebate Vendor Report: Required bi-weekly. Final report must have a cumulative total of all monies spent with each vendor. The following fields must be completed on the Supplier Rebate Vendor Report: vendor business name, address, city, state, zip code, goods or services provided, telephone number, email address, FEIN, and amount. If using Entertainment Partners, Cast and Crew, Media Services, or PES software, discuss with their representative the procedures for keying and editing coding. They have all adopted our format for easy reporting.

- The Rebate Request Form
- The Production Recap Form

### **3. Eligible Purchases**

The intent of the Act and these policies and procedures is that South Carolina Suppliers are to be used at all times. Only South Carolina Supplies purchased from South Carolina Suppliers will be eligible for the Supplier Rebate.

A “South Carolina Supplier” is an entity, including but not limited to a limited liability company, a single member limited liability company, a corporation, an S corporation, a partnership or a sole proprietorship that:

- 1) has at least one full-time employee within the State;
- 2) has a physical location in the state that consists of more than a post office box or drop box and that maintains normal business and has a South Carolina telephone number;
- 3) has registered to pay South Carolina income taxes and withholding taxes, and if applicable, South Carolina sales tax;
- 4) has registered to do business with the South Carolina Secretary of State; and
- 5) evidences an intent to be permanently domiciled in this State.

To the extent that a purchase is made from someone other than a South Carolina Supplier, that expenditure will not be eligible for the Supplier Rebate.

A “South Carolina Supply” is an item or service typically subject to South Carolina sales tax and obtained by the production company from a South Carolina Supplier. In addition to items subject to South Carolina sales tax, the following items and services are also eligible for the Supplier Rebate if provided by a South Carolina Supplier:

- Rent and leases personal to the production company only, leases to an individual working for the production company do not qualify.
- Costs of a story and scenario to be used for a film if writer is a South Carolina resident.
- Location fees
- Commission on insurance coverage if purchased through a South Carolina-based insurance agent.
- Set clean-up services
- Casting services
- Postproduction editing, effects, graphics, and audio services, for services performed in South Carolina and subject to taxation by the State of South Carolina, if these expenditures are directly attributable to the production.
- Fee for managing or processing payroll accounting services (Fees of up to 1.5% of payroll are eligible).
- Utilities, obtained from a private vendor

Ineligible Items include, but are not limited to:

- Labor expenditures already claimed by another exemption, credit or rebate.
- Any personnel or labor expenditures, however structured or classified.
- State unemployment tax, FICA, and Federal unemployment taxes. See Wage Rebate for additional information.
- Payments made to Federal, State, County, and Local governments for licensing or taxation.
- Airfare and bonding
- Trade group or union dues
- Personal health services, gifts, or expenditures
- Payment of principal, prepaid interest, finance or service charges, points, fees, commissions, and all other charges paid to any bank or any other financial institution, payroll service company, or any other person relating to any loan of money or entity or other financial transaction.

Note: The State of South Carolina does not allow pass-through companies or production services companies (companies with arrangements solely to acquire materials unavailable for purchase or rent for a production company to take advantage of a rebate).

Other Considerations:

- Form 403, Assignment of Rebate Form, for payroll companies must be completed before physical production begins.
- From page 17, this document: A production company may be disqualified from receiving a SC rebate for “Engaging in economic transactions and business relationships and structures without substance, entered into for the purpose of increasing the amount of incentives or altering the appearances of expenditures or vendors in order to meet the qualifications for the incentives.” During the production, the Accounting Department must provide “spend” reports to the SCFC auditor and staff in Excel. These reports must be generated within the first two weeks of the opening of the production office to begin the audit process. Upon receiving this cost accounting, the SCFC auditor will make an appointment to come for an on site inspection of records.
- Every 30 days beginning with the first day the production office opens, an accounts payable ledger must be sent to the SCFC to verify payments of accounts.
- Only actual paid expenditures incurred in South Carolina made by the production company may be recorded, certified as direct production or qualified personnel expenses, and claimed at the end of production for the South Carolina cash rebate. Expenditures including, but not limited to accrued charges, accounts payable, payments waiting to be paid, or deferrals do not constitute direct production expenditures eligible for the rebate.
- Regarding selling items at the end of the film, capital expenditures etc: Refunds, credits, refunded claims from insurance companies, and other credits from purchase returns invoicing errors, and other credits to the production must be credited against the production cost and included in the Excel reports required for audit. Monies from the sales of equipment, vehicles, props, and other production assets such as tangible personal property purchased by the production company must be deducted from the expenditures presented in the final audit.
- Where production expenses exceed \$5,000 dollars and remain in inventory for future productions, the SCFC will review and in some cases may require that the full thirty percent

(30%) rebate be given only on an amortized portion of the value of the asset. The SCFC will use a five (5) year flat depreciation for such assets.

- The production company and any related entity working in South Carolina in connection with the production must be current with respect to all South Carolina taxes and obligations owed to the State of South Carolina. The Production Company must be current with respect to obligations to state residents and companies, or the production company will not be eligible to receive any rebate funds for individual obligations that have not been paid. In the event that debts are not resolved within sixty (60) calendar days of the completion of physical production, the Production Company authorizes the SCFC to pay any SC debts of the production company from the production company's reserved rebate funds first.
- The Film Evaluation and Advisory Committee has final discretion with regard to the eligibility of items and services for the Supplier Rebate.

#### **4. Reimbursement Procedures**

- At the end of production in South Carolina, the production company must request a certificate of completion from the Film Commission.
- The production company claiming a Supplier Rebate must make all financial records available for inspection to the auditor. The auditor will be the production company's contact regarding all compliance issues and will be onsite verifying expenditures and receipts. On a bi-weekly basis, the production company claiming the Supplier Rebate must provide a standardized, electronic report, referred to as the Supplier Rebate Report (see Attachment D) to the Auditor. The report must be delivered electronically in Excel and contain only "SC spend." The final spending reports must include all spending (both SC and elsewhere). We prefer one consolidated report but if necessary will accept two reports in Excel. A vendor report in Excel is also required bi-weekly (see Attachment E). Discuss with your software company how to key, code, and fill in the required fields.
- At the time of the final audit (usually about three weeks from the end of physical production), a closeout report must be provided showing a list of the production company's outstanding SC vendor payments (vendors that have not been paid, vendors for whom checks have been written but not cleared the bank).
- The auditor will work with the production accountant to audit all records and receipts. Final Supplier Rebate audit must be completed before the production and an accounting representative leave South Carolina.
- Payment of the SC cash rebate may be withheld pending complete payment of all SC vendors and personnel involved in the production.
- Before the end of production, the production company will:
  1. Complete Department of Revenue Certificate of Tax Compliance Request Forms (Form C-268). It is best to complete this within the first weeks of production.
  2. Submit Form C-268 to the Film Commission for each production company and any payroll services company that will be used in connection with the production and for which the Wage Rebate is applicable. A \$60 processing fee, in the form of a check made out to the "S.C. Department of Revenue," must accompany each Form C-268. This check is submitted through the Film Commission at the end of production, not requested directly by the aforementioned entities.

3. Complete and send the final Supplier Rebate Report and the Supplier Rebate request to the South Carolina Film Commission. This report must contain all expenditures incurred by the motion picture company both in and outside of South Carolina. This must be done before the production company leaves the State so that expenditures may be audited. The Supplier Rebate will not be processed or payment made until the production company provides all documentation for auditing and verification, all required forms are completed, and the Department of Revenue issues Certificates of Tax Compliance for all required companies. Once these prerequisites have been met, the Film Evaluation and Advisory Committee will either approve or reject all or part of the Supplier Rebate request.

Note: The production company and any related entity working in South Carolina in connection with the production must be current with respect to all South Carolina taxes and obligations owed to the State of South Carolina. The Production Company must be current with respect to obligations to state residents and companies or the production company will not be eligible to receive any rebate funds for individual obligations that have not been paid. In the event that debts are not resolved within sixty (60) calendar days of the completion of physical production, the Production Company authorizes the SCFC to pay any SC debts of the production company from the production company's reserved rebate funds first.



## C. WAGE REBATE

A production company may receive a Wage Rebate of the money spent on wages subject to South Carolina withholding tax associated with the production. Feature films, television pilots, videos, and commercials are eligible. In order to qualify for the Wage Rebate, a production company's total production costs in South Carolina must exceed \$1 million (one million dollars) in a single taxable year. For wages to qualify for the rebate the individual must qualify under the Motion Picture Incentives Act and the individual must be subject to South Carolina income tax withholding to the Department of Revenue.

Only those wages that are subject to South Carolina withholding tax are eligible for the Wage Rebate. An individual is only liable for income taxes for personal services actually performed in South Carolina and is only subject to income tax withholding on payroll paid while that individual is working in South Carolina. Therefore, the Wage Rebate is available only for wages attributable to work performed while an individual is actually working in South Carolina.

The following wages are eligible for the Wage Rebate:

### **WAGE REBATE #1: FEATURE LENGTH FILMS, TELEVISION PILOTS, TELEVISION SERIES VIDEOS, OR COMMERCIALS**

- Twenty-five percent (25%) of wages of South Carolina residents working for the production in South Carolina, which includes talent, management, and labor.
- Twenty percent (20%) of wages of nonresidents hired by a personal service corporation and used directly in filming or postproduction in South Carolina for the production.
- Twenty-five percent (25%) of wages of South Carolina residents hired by a payroll services company or loan out company and used directly in the filming or postproduction in South Carolina for the production.
- Twenty percent (20%) of wages nonresidents hired by a payroll services company or loan out company and used directly in the filming or postproduction in South Carolina for the production.
- Twenty percent (20%) of wages of performing artists (which includes stunt performers) hired by a personal service corporation and used directly in filming in South Carolina for the production; the performing artist receiving payments from the personal service corporation and the personal service corporation must both pay South Carolina income tax.
- All qualifying wages must be subject to South Carolina withholding tax. For wages to qualify for the rebate the individual must be certified by the South Carolina Department of Parks, Recreation & Tourism as a qualifying individual and the individual must have had South Carolina income tax withholding withheld and remitted to the Department of Revenue.

All personnel must be subject to South Carolina withholding taxes for their wages to be qualified for the Wage Rebate. Payments to Loan Out Corporations for services provided to the production do qualify for the wage rebate, however, South Carolina withholding must be applied to those payments at the (discounted) rate of two percent (2%). See Point #4, "Special Rules for Personal Service Corporations and Loan Out Companies" in Wage Rebate Section for details on individual fringes (including health and pension, State Unemployment Tax, FICA, Federal Unemployment Tax, Worker's Compensation Insurance), kit or box rentals, cell phone reimbursements, trade group or union dues, personal health services, and gifts are not eligible for the wage rebate.

- A payroll services company is required to assign the Wage Rebate to the production company before physical production begins in South Carolina.
- The production company may irrevocably assign the Wage Rebate to a single financier or financial institution with approval of the Film Evaluation and Advisory Committee within 30 days of the first production day.
- The production company must make payroll books and records available for inspection by the Department of Department of Parks, Recreation & Tourism, Department of Revenue, and the Film Commission at times requested by these entities.
- Bi-weekly wage reports must be electronically sent to the Auditor, in Excel, and must contain SC taxable individual and personal service corporations. Encrypted Social Security numbers must be included. We prefer standardized last four digits but will accept any method as long as it is uniform on all reports (Attachment B). The final wage report must contain encrypted SSNs and FEINs for personal service corporations (Attachment C).
- A complete list of payroll services companies, loan out companies, and/or personal service corporations must be given to the Film Commission, and must be approved by the Department of Parks, Recreation & Tourism before physical production begins in order to assign the Wage Rebate to the production company (Attachment A). Further, the Department of Parks, Recreation & Tourism must certify each individual as a qualified individual before the individual's wages may be eligible for the Wage Rebate.
- Wage Rebate Fund dollars are appropriated annually by the State legislature. Therefore, wage Rebate Fund dollars are reserved for projects only until May 31 of each year. Should your project span South Carolina's fiscal year, complete the application as directed. Indicate on an attachment the amount of wage dollars that will be spent and the proportional rebate dollars applied for (1) by May 31 and (2) the wage dollars that will be spent and proportional amount rebate dollars applied for from June 1 until the completion of your project. Approved projects that span fiscal years will be first in line for the following year's appropriation of wage rebate dollars.
- Note: The production company and any related entity working in South Carolina in connection with the production must be current with respect to all South Carolina taxes and obligations owed to the State of South Carolina. The Production Company must be current with respect to obligations to state residents and companies, or the production company will not be eligible to receive any rebate funds for individual obligations that have not been paid. In the event that debts are not resolved within sixty (60) calendar days of the completion of physical production, the Production Company authorizes the SCFC to pay any SC debts of the production company from the production company's reserved rebate funds first.

## **2. Required and Optional Forms**

- (required) Form WH-403: Assignment of Rebate to Motion Picture Production Company  
Any payroll services company that is used must complete this form prior to the commencement of filming in South Carolina. This form provides an irrevocable assignment of its rebate to the production company. See Form WH-403.
- (optional) Assignment of the Wage Rebate to a Single Financial Institution  
If the production company desires to assign the Wage Rebate to a financier or financial institution, this form must be filed with the Director of the Department of Parks, Recreation & Tourism no later than thirty (30) days after filming begins in South Carolina and must be approved by the Film Evaluation and Advisory Committee. The application must include a waiver of confidentiality

allowing the Department of Parks, Recreation & Tourism and the Department of Revenue to exchange information about the production company and the financier or financial institution. Once an assignment is approved, Wage rebates will only be made to the single financier or the financial institution. See Attachment F.

- (required) Forms WH-1605: SC Withholding Quarterly Tax Return; and WH 1606: SC Withholding Fourth Quarter/Annual Reconciliation: These forms are filed with the Department of Revenue. Although Form WH-1605 is a quarterly form, it may be filed earlier than the due date of the return and not held until the end of the quarter. The WH-1606 is an end-of-year reconciliation form that must be filed by all employers in South Carolina. See Form WH-1605 and Form WH-1606.
- (required) Form UCE 120: Employer Quarterly contribution and Wage Reports; and, if necessary, UCE 120A: Employer Quarterly Continuation Sheet: This is the standard South Carolina Employment Security Commission unemployment tax application return. Their Web site is [www.sces.org](http://www.sces.org). See Forms UCE 120 and UCE 120A.
- A complete list of all loan out companies with pertinent information (see Attachment A)

### **3. Reimbursement Procedures**

- At the end of production in South Carolina, the production company must request a certificate of completion from the SC Film Commission.
- Any production company claiming the Wage Rebate must provide a standardized, electronic report in Excel, referred to as the Wage Rebate Interim Report (see Attachment B), on a weekly basis to the Auditor and have individual timesheets available to the Auditor. The Auditor will be your contact regarding all compliance issues and will be onsite to perform a random audit of the production company's payroll books and financial records. Additionally, the production company must provide the Auditor with copies of Form WH-1605 (the online form can be found at [www.sctax.org](http://www.sctax.org)) and UCE-120 (the online form can be found at [www.sces.org](http://www.sces.org)).

Note: If the production spans two or more calendar quarters, Form WH 1605 and Form UCE-120 must be submitted for each quarter.

- Requests for Certificates of Tax Compliance Request Forms (Form C-268) must be submitted if they were not submitted earlier with the Supplier Rebate. The production company has sixty (60) calendar days from the completion of physical production in South Carolina to request a Wage Rebate. Funds are released after that time and all further Wage Rebate claims may be barred.
- The production company must provide a standardized, electronic report in Excel, referred to as the Wage Rebate Closeout Report (see Attachment B), to the Auditor within sixty (60) calendar days of the completion of physical production in South Carolina. In addition to the Wage Rebate final report, the production company must provide a Wage Information Report to both the Film Commission and the Auditor that includes the production's name, the name of each individual who worked on the motion picture, the Social Security Number for each individual, the dates employed, the dates the individual worked on the production, a job description for each individual, the total gross wages for each individual, the South Carolina taxable wages subject to withholding for each individual, the amount of Wage Rebate attributable to each individual, and other information considered necessary by the Film Commission or Department of Parks, Recreation & Tourism. The Wage Information Report must also contain the total amount of withholding attributable to all individuals who worked on the production in South Carolina.<sup>4</sup>

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<sup>4</sup> S.C. Code § 12-62-50(C)

- The production company requests the Wage Rebate by submitting the Wage Rebate request with substantiating materials to the Department of Parks, Recreation & Tourism and the Film Commission
- The auditor will verify that the production company has met the \$1 million expenditure requirement and will complete a final audit.
- If any payroll services company or production company that has individuals subject to the Wage Rebate is not current with respect to all taxes or obligations owed to the State or its political subdivisions, then the production company is permanently barred from receiving wage rebates for the production.<sup>5</sup>
- Payment will be made within thirty (30) calendar days when the following is verified:
  - All documentation is received in the correct format, and
  - The auditor has verified final expenditures, which have been reviewed and agreed to by the production company's accountant, and
  - Tax compliance approved.
- In order to assure full compliance, the Department of Parks, Recreation & Tourism also reserves the right to require a third-party audit of production records at the expense of the production company.

#### **4. Special Rules for Personal Service Corporations and Loan Out Companies**

- A production company that uses individuals in the production that are employed by a personal service corporation or loan out company must provide the Film Commission with the following information about the personal service corporation or loan out company in order for the individual(s) to qualify for the Wage Rebate: the Federal Employer Identification Number (FEIN) and a personal Social Security Number for any individual who is working for the personal service corporation or loan out company that is to be subject to the wage rebate. In South Carolina, the law requires that any employer having an individual within this State register and pay withholding with respect to that individual and an individual must be subject to South Carolina withholding in order to have his or her wages subject to the Wage Rebate.
- Loan Out Corporations are subject to a maximum of withholding rate of two percent (2%).

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<sup>5</sup> S.C. Code § 12-62-50(B)(2)  
6/19/2014

## **CODE OF LAW PERTAINING TO LOAN OUT CORPORATIONS SECTION 12-8-550**

Withholding for nonresident temporarily conducting business or performing personal services; exemption; revocation of exemption.

(A) A person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent (2%) of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed \$10,000 (ten thousand dollars). This section does not apply to a nonresident who registered with the Secretary of State or the Department of Revenue and by that registration agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Registering with the Secretary of State or the department is not an admission of tax liability nor does it require the filing of an income tax or franchise (license) tax return. If the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.

(B) The department may revoke the exemption granted by registering with the Secretary of State or the department if it determines that the nonresident taxpayer is not cooperating with the department in the determination of the nonresident taxpayer's correct South Carolina tax liability. This revocation does not revive the duty of a person hiring, contracting, or having a contract with a nonresident to withhold, until the person receives notice of the revocation.

(C) This section does not apply to payments on purchase orders for tangible personal property when those payments are not accompanied by services to be performed in this State.

## **IV. Additional Matters**

### **A. Receiving Your Rebate and Other Matters Relating to the Wage and Supplier Rebates**

Upon final verification, the auditor will recommend Wage and/or Supplier Rebate amounts to the Film Commission, Department of Parks, Recreation & Tourism and the Film Evaluation and Advisory Committee. An approved payment voucher will be forwarded to the South Carolina Comptroller General's office for payment by the Treasurer's office. Within thirty (30) calendar days of final audit and compliance certification, the Production Company will receive a check for each Wage and Supplier Rebate.

Only actual expenditures paid shall be qualified expenditures, not outstanding accounts.

### **B. A South Carolina Film Commission Screen Credit is Required for Each Production that Receives SC Incentives**

All films that utilize a South Carolina tax credit, rebate, or exemption are required to legibly recognize the State of South Carolina in the end credit roll of the final, distributed product with the following statement:

"Filmed in South Carolina pursuant to the South Carolina Motion Picture Incentive Act." <sup>6</sup>

Your agreement to this condition will be evidenced by an Acknowledgement Form provided by the Film Commission. The State of South Carolina reserves the right to pursue any and all remedies available to enforce this provision or to cure any breach of this provision. Failure to fully comply with this provision may also result in denial of incentives for future productions.

The State of South Carolina also reserves the right to refuse the use of South Carolina's name in the credits of a production filmed or produced in the State. <sup>7</sup>

### **C. Required Documentation Checklist**

The following documentation must be received by the Auditor before Wage and Supplier rebates will be released:

Required for both Wage & Supplier Rebate

- Certificate of Completion (issued by the Film Commission)
- Certificates of Tax Compliance Request Form from the Department of Revenue for the production company and any payroll services company. associated with the production
- Verification, through audit, that the \$1 million (one million dollar) South Carolina expenditure minimum has been met
- Original Tax Exemption Certificate must be returned to the Department of Revenue. The Film Commission may facilitate the return of the exemption certificate to the Department of Revenue by collecting it from the production company and delivering it to the appropriate employee at the Department of Revenue
- W9 for the SC Production Company
- South Carolina Acknowledgement Form signed

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<sup>6</sup> S.C. Code § 12-62-90

<sup>7</sup> S.C. Code § 12-62-90

- Crew and Supplier Contact List
- Location List with Contacts
- Final day of days production schedule
- Dates wrapped, Production Company's taxable year, total number of South Carolina hires, total number of South Carolina Crew hired, number of hotel rooms/nights, number of prep, production and wrap days. Per Diem and stipend totals by above the line and below the line categories
- Forwarding address and contact information for the responsible producer including phone(s), faxes and e-mail

#### Supplier Rebate

- Supplier Rebate Interim Reports in Excel
- Supplier Rebate Final Report in Excel
- Complete Vendor List in Excel
- List of totals spent with non-South Carolina vendors, separated by category in Excel
- Supplier Rebate Request Form in Excel

#### Wage Rebate

- Wage Rebate Interim Reports in Excel
- Wage Rebate Final Report in Excel
- Department of Revenue Form WH-1605 for all calendar quarters in which withholding tax is owed
- Form UCE 120 for all calendar quarters in which unemployment tax is owed
- Assignment of rebate for any payroll service companies, loan out companies, or personal service corporations
- A complete list of all loan out companies with pertinent information (see Attachment A)
- Wage Rebate Request Form
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#### Additionally Required Items

In addition to acknowledging South Carolina in the film credits as provided in the acknowledgement form, the Film Commission requires the following from any production company approved for incentives:

- Mutually approved still production photos and B-roll containing images cleared for use in order to promote future filming in South Carolina
- The SC Film Commission will be allowed to take photographs of the production for promotional purposes at mutually agreeable times
- The production company will provide to the SCFC at least twenty-five (25) quality and usable photos within the first three (3) weeks of physical production. Photographs including actors, directors, camera persons, and other active crew in the foreground are preferred
- Publicity photos of principle actors must be provided during the first two (2) weeks of shooting or earlier if possible
- A DVD courtesy copy of the production
- Prior to distribution, one sheets, and press and electronic press kits concerning the production to promote future filming
- SC Film Commission will have access to the set during shooting and the production company will assist with at least four (4) set visits with allies and dignitaries during production

We also ask that the producer allow us to conduct an exit interview and that permission be given to the SC Film Commission to use names and quotes by cast and crew to promote filming in South Carolina.

## Chronological Checklist

The most current checklist will be given to the production company at the first SC meeting.

### PRIOR TO THE COMMENCEMENT OF PHYSICAL PRODUCTION

- ☐ 1. Production company discusses project with the SC Film Commission and completes an application.
- ☐ 2. Once the application information is complete, the SC Film Commission will review and present the project and the SC Film Evaluation and Advisory Committee will approve or deny the application.
- ☐ 3. Approval in the form of the Qualifying Production Letter with deadlines for production dates and reserved amounts is forwarded to the production company. Countersigned Qualifying Production Letter returned within five (5) days.
- ☐ 4. Copy of Secretary of State registration for both production and any other third-party companies must be provided to the SC Film Commission.
- ☐ 5. Approval of payroll services provider by the SC Film Commission.
- ☐ 6. Production company establishes a South Carolina production office.
- ☐ 7. Original Certificate of Insurance for a minimum of \$1 million naming the State of South Carolina and its agents as additionally insured.
- ☐ 8. A copy of a South Carolina pyrotechnics license provided to the SC Film Commission.
- ☐ 9. The payroll service company must assign its rebate to the production company using Form WH403.
- ☐ 10. List of payroll service companies, loan out companies and personal service corporations, with accompanying information, is provided to the SC Film Commission for approval.
- ☐ 11. Publicity photos of leading actors sent to the SCFC. A press release announcing the production, and mutually agreed to by the production and the SCFC, will be created and distributed.

### COMMENCEMENT OF PRINCIPAL PHOTOGRAPHY/PHYSICAL PRODUCTION

- ☐ 1. Production company may assign the Wage Rebate to another financial entity, upon approval of the SC Film Evaluation and Advisory Committee, up until 30 days after filming begins.
- ☐ 2. Wage Rebate Report (Attachment B) and Supplier Rebate (Attachment D) expenditures are submitted weekly to the SC Film Commission. Wage reports must be in Excel and include FSOs and employees with encrypted SSN/FEIN. Supplier reports are required in Excel: SC, other spend (good/bad spend).
- ☐ 3. Excel reports every two weeks showing SC employees, the percent of SC employees on the production, the increase or decrease in SC employees over the two week period.
- ☐ 4. Two SC Department of Revenue wage forms are submitted to the SC Department of Revenue, copied to the SC Film Commission and the SC Film Evaluation and Advisory Committee:
  - ☐ a. Form WH-1605 filed with the SC Department of Revenue showing all withholding;
  - ☐ b. Form UCE-120 filed with the SC Employment Security Commission containing additional wage information.
- ☐ 5. SC Film Commission auditor(s) are onsite weekly or every other week to verify expenditures and receipts, and work closely with the production accountant to discuss which expenditures qualify.
- ☐ 6. Production company and payroll company, must apply to the SC Department of Revenue through the SC Film Commission for compliance certificates, pay a \$60 processing fee, and forward certificate(s) to the SC Film Commission.



- ☐ 7. Twenty-five (25) production stills and publicity photos of principle actors.
- ☐ 8. Ongoing set visits by SCFC personnel; SCFC arranged visits by allies and dignitaries.

#### COMPLETION OF PRINCIPAL PHOTOGRAPHY/PHYSICAL PRODUCTION

- 1. Production Company
  - ☐ a. Notifies South Carolina vendors of completion date.
  - ☐ b. Requests Certificate of Completion from the SC Film Commission; notifies the SC Film Commission of exit date.
  - ☐ c. Sends final expenditure report (in Excel format) for the Supplier Rebate Vendor Report (Attachment E).
  - d. Report must be formatted to show South Carolina vendors/expenditures by category as well as out-of-state vendors/expenditures by category.
  - ☐ e. The company submits the following in a Word or Excel file:
  - ☐ f. Complete list of payroll companies, loan out companies, or personal service corporations and the assignment of rebate forms for each;
  - ☐ g. Location, cast, crew, and supplier lists (including phone and address information);
  - ☐ h. Original Sales and Use Tax Exemption Certificate;
  - ☐ i. Contact information for principal(s) involved in the postproduction phase.
  - ☐ j. The producer completes an exit interview.
  - ☐ k. Completes and signs the acknowledgement form.
- ☐ 2. The production company completes a Rebate Request for the Supplier Rebate.
- ☐ 3. The SC Film Commission and the SC Department of Parks, Recreation & Tourism verify final reimbursement request.
- ☐ 4. Within thirty (30) calendar days of final audit, compliance, and mutual review, or the date the final request for a Supplier or Wage Rebate is received, whichever occurs later, the production company will receive a check for each Wage and Supplier Rebate.

#### PRODUCTION COMPANY LEAVES STATE

- ☐ 1. Wage reports continue as persons are still employed.
- ☐ 2. Wage Rebate Final Report and Wage Rebate Request must be submitted within sixty (60) calendar days from the completion of physical production.
- 3. One sheets and press and electronic press kits concerning the production to promote future filming.